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**IN THE
COURT OF APPEALS OF INDIANA**

SHERMAN NICHOLSON, JR.,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 03A01-0603-CR-111

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT

The Honorable Chris D. Monroe, Judge

Cause Nos. 03D01-0502-FC-206 and 03D01-0408-FD-1945

August 24, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Sherman Nicholson, Jr., challenges his aggregate sentence of five years for two separate convictions of possession of marijuana, both class D felonies.

Issue

We restate the issue as whether the trial court abused its discretion in sentencing Nicholson.

Facts and Procedural History

On September 19, 2004, Nicholson was arrested for driving while suspended. During a search incident to arrest, police found over thirty grams of marijuana in his pocket. As a result, Nicholson was charged with possession of marijuana, a class D felony. On November 14, 2004, Nicholson was again arrested on an outstanding warrant. Police found over thirty grams of marijuana on his person and over three grams of cocaine in his car. Nicholson was charged with possession of marijuana, a class D felony, and possession of cocaine, a class C felony.

On April 25, 2005, Nicholson entered into a plea agreement. He agreed to plead guilty to both marijuana possession charges, and the State agreed to dismiss the cocaine possession charge. On May 25, 2005, Nicholson was sentenced to an enhanced term of two years for the first conviction and an enhanced term of three years for the second. They were ordered to run consecutively for an aggregate sentence of five years. In its sentencing order, the trial court found as a mitigator that Nicholson did not appear to be a threat to anyone else. The trial court also listed four aggravating circumstances: that Nicholson had a prior conviction for the same offense, that the offense was committed approximately one month

after he had completed probation for the previous conviction, that the circumstances appeared to indicate that he intended to sell the marijuana, and that the second offense occurred less than two months after the first.

Discussion and Decision

Nicholson asserts that because the trial court failed to list the aggravating and mitigating circumstances at the sentencing hearing or comment on their weight, the trial court did not engage in an adequate weighing process. Sentencing decisions are reviewed for an abuse of discretion. *Powell v. State*, 751 N.E.2d 311, 315 (Ind. Ct. App. 2001).

In order for a trial court to impose enhanced or consecutive sentences, it must (1) identify the significant aggravating factors and mitigating factors; (2) relate the specific facts and reasons that the court found to those aggravators and mitigators; and (3) demonstrate that the court has balanced the aggravators with the mitigators.

Bostick v. State, 804 N.E.2d 218, 224-25 (Ind. Ct. App. 2004). The purpose for these requirements is to guard against arbitrary sentences and provide an adequate basis for appellate review. *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006). The trial court is not required to assign a specific weight to each aggravating and mitigating circumstance. *Leffingwell v. State*, 810 N.E.2d 369, 371 (Ind. Ct. App. 2004). We look at the trial court's comments during the sentencing hearing as well as its written sentencing order to determine whether the trial court adequately explained the reasons for the sentence imposed. *Powell*, 751 N.E.2d at 315.

The trial court's sentencing order clearly enumerates the aggravating and mitigating that it considered. Although the trial court did not explicitly enumerate these factors during the sentencing hearing, the trial court did comment upon each of them. The trial court noted

that Nicholson had a prior felony conviction for possession of marijuana. His next arrest occurred approximately a month after he completed probation for that offense. His third drug arrest occurred approximately two months after that. The trial court also discussed circumstances which it believed indicated that Nicholson was engaged in dealing. Nicholson had a relatively large quantity of drugs separated into several packages, and scales were also found in his vehicle.

Nicholson further argues that the trial court's weighing process was also flawed in that it did not give mitigating weight to his guilty plea.

The finding of mitigating circumstances is within the discretion of the trial court. An allegation that the trial court failed to find a mitigating circumstance requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. The trial court is not obligated to accept the defendant's contentions as to what constitutes a mitigating circumstance.

Id. A trial court does not need to assign significant mitigating weight when the plea is "more likely the result of pragmatism than acceptance of responsibility and remorse." *Davies v. State*, 758 N.E.2d 981, 987 (Ind. Ct. App. 2001), *trans. denied*. Here, the record clearly reflects that the trial court was unconvinced that Nicholson felt remorse or was ready to take responsibility for his actions. Nicholson was unable to explain to the court's satisfaction why he believed he would not offend again. Furthermore, Nicholson benefited from his guilty plea because the State agreed to drop a class C felony charge, which could have added up to eight years to his sentence. Ind. Code § 35-50-2-6. We conclude that the trial court provided an adequate explanation for the sentence it imposed, and therefore, we affirm.

Affirmed.

BAKER, J., and VAIDIK, J., concur.